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23 **UNITED STATES DISTRICT COURT**

24 **DISTRICT OF NEVADA**

25 VOSS OF NORWAY, A.S.A.,

26 Plaintiff,

27 vs.

28 MICHELLE KING; an unknown entity,  
individual, or group of individuals doing  
business as NV HOTEL COMPANY and  
BOUTIQUE HOTELIERS,

Defendants.

Case No. 2:16-cv-01117-APG-PAL

**PLAINTIFF'S EX PARTE MOTION  
FOR LEAVE TO SERVE SUBPOENA  
AND PERMIT SERVICE BY OTHER  
MEANS**

1 Plaintiff Voss of Norway, A.S.A. (“Plaintiff” or “Voss”) hereby moves the court, *ex*  
2 *parte*, for entry of an order: (A) granting Plaintiff leave to serve a subpoena on Domains By  
3 Proxy, LLC (“Domains By Proxy”) to identify the Unknown Defendants and obtain reliable  
4 email addresses for all Defendants; (B) permitting Plaintiff to serve Defendant King by email to  
5 the email addresses she is known to have used (*i.e.*, at [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and  
6 [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com)) and by email to any email addresses disclosed by Domains By  
7 Proxy in response to Plaintiff’s subpoena; and (C) permitting Plaintiff to serve the Unknown  
8 Defendants by email to the email addresses disclosed by Domains By Proxy in response to  
9 Plaintiff’s subpoena.

10 This motion is based on the following memorandum of points and authorities, the  
11 accompanying Declaration of Jonathan W. Fountain (the “Fountain Decl.”), the pleadings and  
12 other papers on file in this case, and any oral argument the Court may require or allow.

13 **PRELIMINARY STATEMENT AND BASIS FOR EX PARTE RELIEF**

14 Plaintiff is a Norwegian corporation whose principal place of business is located in  
15 Oslo, Norway. Plaintiff’s principal business is the marketing and sale of artesian drinking  
16 water from Norway (“VOSS water”) sold primarily in distinctive vessels and bottles. Plaintiff  
17 conducts business in the United States and is the owner of a number of U.S. trademark  
18 registrations for the VOSS and related trademarks.

19 Defendant King herself and/or in connection with the Unknown Defendants doing  
20 business as NV Hotel Company and/or Boutique Hoteliers (the “Unknown Defendants”) has,  
21 without authorization from Plaintiff, willfully masqueraded as Plaintiff’s agent for the purpose  
22 of deceiving potential investors into believing that they were negotiating to obtain licensed  
23 trademark rights in Plaintiff’s VOSS Water brand for use in connection with luxury spa  
24 services, vitamins, and related goods and services. Further, the Defendants have sought to  
25 establish and/or operate a business under the name VOSS WATER SPAS seeking to  
26 improperly capitalize on the fame and reputation of Plaintiff in the field of water and water  
27 products, and has obtained one or more internet domain names and has hosted internet web  
28 pages that infringe the rights of Plaintiff in and to the VOSS name and trademark and create a

1 likelihood of confusion between Plaintiff and Defendants.

2 In connection with this scheme, Defendant King has used the following email  
 3 addresses: [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com). In addition,  
 4 Defendant King and/or the Unknown Defendants are believed to conduct business in  
 5 connection with websites located at the following domains: [www.worldwidenv.com](http://www.worldwidenv.com),  
 6 [www.spahotelgroup.com](http://www.spahotelgroup.com), [www.theboutiquegroup.info](http://www.theboutiquegroup.info), [www.fcukhotelsworldwide.info](http://www.fcukhotelsworldwide.info),  
 7 [www.nvwaterspa.com](http://www.nvwaterspa.com), [www.vossprestige.co](http://www.vossprestige.co), and [www.vosswaterspa.us](http://www.vosswaterspa.us). GoDaddy.com, LLC  
 8 (“GoDaddy”) is the registrar of each of these domains (the “Domains”).

9 Domain name registrars like GoDaddy are required to maintain identifying data of  
 10 domain name registrants, including the registrant’s name, physical address, and email address.  
 11 Plaintiff has attempted to identify the Unknown Defendants by looking up their registrant  
 12 contact information in the WHOIS database of domain name registrants.<sup>1</sup> Defendant King and  
 13 the Unknown Defendants, however, have used a privacy protection service provided by  
 14 GoDaddy’s affiliate, Domains By Proxy to hide their true identities, physical addresses, and  
 15 email addresses from the public. Instead of the Unknown Defendants’ actual names, physical  
 16 addresses, and email addresses appearing in the WHOIS database, GoDaddy and Domains By  
 17 Proxy have registered the domains but have inserted proxy contact information into the  
 18 WHOIS database for Ms. King and the Unknown Defendants. For example, the WHOIS  
 19 record for [www.nvwaterspa.com](http://www.nvwaterspa.com) identifies the registrant as “Registration Private,” the  
 20 registrant organization as “Domains By Proxy,” the registrant street address as 14747 N.  
 21 Northsight Blvd., Suite 111 PMB 309, Scottsdale, AZ, 85260 (the address of GoDaddy and  
 22 Domains By Proxy), and the registrant email address as  
 23 [nvwaterspa.com@domainsbyproxy.com](mailto:nvwaterspa.com@domainsbyproxy.com). Absent a subpoena to Domains By Proxy, Plaintiff  
 24 has no way to determine the identities of the Unknown Defendants who have registered the  
 25 domains being used to impersonate Plaintiff.

26

27 <sup>1</sup> *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1064 n.22 (9th Cir. 2009) (“WHOIS is a  
 28 publically available online database through which users can access information regarding  
 domains, including the registrant’s name, address, phone number, and e-mail address”).

1 Plaintiff filed the Complaint on May 18, 2016. On June 15, 2016 and June 17, 2016,  
 2 Plaintiff's process server went to the address Plaintiff had for Defendant King, 410 S. Rampart  
 3 Blvd., Ste. 390, Las Vegas, Nevada 89145-5749, and attempted to serve the Summons and  
 4 Complaint. (See ECF No. 12, Clarke Decl.) The business located at the address was Regus  
 5 Suites (*id.*), a company that provides office space and office services for other businesses.  
 6 (Fountain Decl. ¶ 7.) Defendant King was not found there. (See Clarke Decl.) Nor was any  
 7 business named NV Hotel Company or Boutique Hoteliers. (*Id.*) Plaintiff's process server  
 8 spoke with an employee of Regus Suites who disclosed that Boutique Hoteliers and Defendant  
 9 King had been co-tenants of an office suite at that location approximately six months ago but  
 10 were no longer doing business there. (*Id.*) Plaintiff knows of no other physical addresses for  
 11 Defendant King or for any of the Unknown Defendants. (Fountain Decl. ¶ 7.)

12 Accordingly, Plaintiff respectfully requests that the Court enter an order: (A) granting  
 13 Plaintiff leave to serve a subpoena on Domains By Proxy seeking the registrant contact  
 14 information for the Domains; (B) permitting Plaintiff to serve Defendant King by email to the  
 15 email addresses she is known to have used (*i.e.*, at [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and  
 16 [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com)) and by email to any email addresses disclosed by Domains By  
 17 Proxy in response to Plaintiff's subpoena; and (C) permitting Plaintiff to serve the Unknown  
 18 Defendants by email to the email addresses disclosed by Domains By Proxy in response to  
 19 Plaintiff's subpoena.

20 **STATEMENT OF FACTS**

21 This is an action for trademark infringement, counterfeiting, false advertising, unfair  
 22 competition, false designation of origin, false or misleading description or representation of  
 23 fact, deceptive trade practices, and other related claims. Defendant has, without authorization  
 24 from Plaintiff, willfully masqueraded as Plaintiff's agent for the purpose of deceiving potential  
 25 investors into believing that they were negotiating to obtain licensed trademark rights in  
 26 Plaintiff's VOSS Water brand for use in luxury spa services, vitamins, and related goods and  
 27 services. (See ECF No. 1, Compl. ¶ 1.) Further, Defendant has sought to establish and/or  
 28 operate VOSS WATER SPAS seeking to improperly capitalize on the fame and reputation of

1 Plaintiff in the field of water and water products, and has obtained one or more internet domain  
 2 names and has hosted internet web pages that infringe the rights of Plaintiff in and to the VOSS  
 3 name and trademark and create a likelihood of confusion with Plaintiff. (*Id.*)

4 Plaintiff Voss of Norway, A.S.A. (“Plaintiff”) is a Norwegian corporation having its  
 5 principal place of business at Bygdøy alle 17, N-0262 Oslo, Norway. Its principal business is  
 6 the marketing and sale of artesian drinking water from Norway (“VOSS water”) sold primarily  
 7 in distinctive vessels and bottles. (Compl. ¶ 2.)

8 On information and belief, Defendant Michelle King (“Defendant King”) is an  
 9 individual residing and working in Las Vegas, Nevada. On information and belief, Defendant  
 10 King’s business address is 410 S. Rampart Blvd., Ste. 390, Las Vegas, Nevada 89145-5749.  
 11 (Compl. ¶ 3.) On information and belief, while engaging in the conduct complained of herein,  
 12 Defendant King uses or has used the telephone numbers (702) 997-1913 and (702) 606-8361,  
 13 as well as the following email addresses: [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and  
 14 [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com). (*Id.*)

15 On information and belief, the Unknown Entity, Individual, or Group of Individuals  
 16 doing business as NV Hotel Company and/or Boutique Hoteliers (“Unknown Defendants”) are  
 17 persons, companies, or entities affiliated with Defendant King residing and doing business in  
 18 this judicial district and elsewhere under the names NV Hotel Company and/or Boutique  
 19 Hoteliers. (Compl. ¶ 4.) On further information and belief, the Unknown Defendants do  
 20 business in connection with websites at the following domain names: [www.worldwidenv.com](http://www.worldwidenv.com),  
 21 [www.spahotelgroup.com](http://www.spahotelgroup.com), [www.theboutiquegroup.info](http://www.theboutiquegroup.info), [www.fcukhotelsworldwide.info](http://www.fcukhotelsworldwide.info),  
 22 [www.nvwaterspa.com](http://www.nvwaterspa.com), [www.vossprestige.co](http://www.vossprestige.co), and [www.vosswaterspa.us](http://www.vosswaterspa.us). (*Id.*)

23 **PLAINTIFF’S VOSS BRAND AND TRADEMARKS**

24 Plaintiff is primarily in the business of producing and supplying bottled artesian  
 25 drinking water from Norway. (Compl. ¶ 8.) Plaintiff is the owner of a number of U.S.  
 26 trademark registrations, including but not limited to the following:

27 <b>Trademarks</b>	28 <b>Goods/Services</b>	29 <b>Serial / Reg. No.</b>	30 <b>Status/Status Date</b>	31 <b>Owner</b>
VOSS	32 – Drinking water		REGISTERED –	VOSS OF

1		78-507375 3,449,399	June 17, 2008	NORWAY ASA (NORWAY CORPORATION)	
2					
3	VOSS	21 – Refillable beverage containers distributed empty, namely, glass or plastic bottles	77-528188 3,717,456	REGISTERED – December 1, 2009	VOSS OF NORWAY ASA (NORWAY CORPORATION)
4					
5	VOSS	18 & 25 – Beach bags; clothing, namely, hats, t-shirts and sweatshirts	78-737806 3,304,033	REGISTERED – October 2, 2007	VOSS OF NORWAY ASA (NORWAY CORPORATION)
6					
7	VOSS ARTESIAN WATER FROM NORWAY	32 – Drinking water	78-553556 3,073,139	REGISTERED – March 28, 2006	VOSS OF NORWAY ASA (NORWAY CORPORATION)
8					
9	VOSS FOUNDATION	36 – Charitable foundation services, namely, fund raising and financial support services to provide clean drinking water to needy families in African nations	77-528337 3,678,547	REGISTERED – September 8, 2009	VOSS OF NORWAY ASA (NORWAY CORPORATION)
10					
11	VOSS WORLD	35 & 43 – Arranging and conducting incentive reward programs to promote the sale and distribution of drinking water; Providing news and information via an Internet website in the field of drinking water, dining, hotels, and resorts	85-402161 4,350,804	REGISTERED – June 11, 2013	VOSS OF NORWAY ASA (NORWAY CORPORATION)
12					
13	VOSS ARTESIAN WATER FROM NORWAY (and Design)	32 - Drinking water	77-190585 3,394,373	REGISTERED - March 11, 2008	VOSS OF NORWAY ASA (NORWAY CORPORATION)
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1				
2	VOSS ARTESIAN WATER FROM NORWAY SPARKLING (and Design)	32 - Drinking water	77-192175 3,394,377	REGISTERED - March 11, 2008
3				VOSS OF NORWAY ASA (NORWAY CORPORATION)
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13 (*Id.* & Ex. A) (“the VOSS Trademarks”).

14 Plaintiff has sold drinking water in a distinctive clear, cylindrical bottle configuration  
 15 having a substantially uniform radius from the base of the bottle to the top of the cap with a  
 16 cylindrical cap of the same general diameter in the United States since at least the year 2000  
 17 and continuously thereafter up to and including the present time. (Compl. ¶ 8.) This  
 18 configuration is a unique configuration within the beverage market and within the market for  
 19 beverage containers. (*Id.* & Ex. B.)

20 Unlike many bottled water producers, Plaintiff has sold its products through licensed  
 21 alcoholic beverage distributors, and has made strong inroads in the hotel, restaurant, and the  
 22 wine and alcoholic beverage retail markets. (Compl. ¶ 9.) Plaintiff created the market for  
 23 selling bottled water in this way and in this channel of trade. (*Id.*) Plaintiff’s products are often  
 24 sold in the finest restaurants, lounges, clubs, spas, and hotels. (*Id.*) For instance, Plaintiff has  
 25 partnered with and provided its products to some of the world’s leading hotel brands, such as  
 26 Waldorf Astoria, Four Seasons, Jumeirah, and The Ritz-Carlton, just to name a few. (*Id.*)  
 27 Plaintiff is in the hydration business, offering products used by the public to enjoy a well  
 28 hydrated lifestyle. (*Id.*) This business is closely related to all aspects of water consumption,

1 water treatments, water spas, hydro-therapy, skin hydration with cosmetics, and the like. (*Id.*)

2 Plaintiff intends to expand its business into all aspects of personal hydration. (*Id.*)

3 Plaintiff has expended a substantial amount of money and effort in advertising and  
 4 promoting the VOSS Trademarks, its products, and its distinctive trade dress. (Compl. ¶ 10.)  
 5 These activities include (but are not limited to: print and media advertising, event sponsorships,  
 6 and product placements in television shows, movies, and celebrity events. Plaintiff advertises  
 7 in magazines that cater to high-end tastes, such as Wine Spectator, and other similar  
 8 publications. (*Id.*) Plaintiff has also sponsored highly popular and nationally televised sporting  
 9 events, such as the BMW PGA Championship. (*Id.*)

10 Plaintiff also promotes its VOSS brand and products on the Internet via its websites,  
 11 including [www.vosswater.com](http://www.vosswater.com), and on social media platforms, including Facebook  
 12 (\vossworld), Twitter (@vosswater), and Instagram (@vossworld). (Compl. ¶ 11.)

13 Plaintiff's substantial promotion, advertising, publicity and public relations activities  
 14 further promote and enhance the goodwill and brand recognition associated with Plaintiff's  
 15 VOSS Trademarks. (Compl. ¶ 12.)

16 As a result of the Plaintiff's extensive efforts to promote its products and brand, the  
 17 VOSS Trademarks are well-recognized among consumers, members of the public, the beverage  
 18 market, in the hospitality industry, with restaurants, hotel operators, and among suppliers,  
 19 retailers, providers, and customers of bottled drinking water. (Compl. ¶ 13.) The VOSS  
 20 Trademarks are inherently distinctive, have been protected with numerous trademark  
 21 registrations, and have developed and possesses strong secondary meaning. (*Id.*) The same  
 22 can be said for the packaging and overall trade dress of VOSS products. (*Id.*) Plaintiff's  
 23 distinctive bottle shape and other VOSS Trademarks have been knocked off by third parties,  
 24 and Plaintiff has had a robust policing and enforcement program to protect its brand and marks.  
 25 (*Id.*) Numerous cease and desist letters and court proceedings have been undertaken by  
 26 Plaintiff to protect the distinctive bottle shape and its other VOSS Trademarks. (*Id.*) The  
 27 VOSS brand, trade dress, and VOSS Trademarks are famous and are widely recognized by the  
 28 general consuming public of the United States as a source identifier for Plaintiff's goods. (*Id.*)

1 Plaintiff offers and provides its products in the United States, including in the State of  
 2 Nevada and in this judicial district, under its VOSS Trademarks. (Compl. ¶ 14.)

3 Plaintiff's goodwill in the VOSS brand is further enhanced by its charitable outreach  
 4 services provided under its VOSS FOUNDATION mark. (Compl. ¶ 15.) The VOSS  
 5 Foundation is dedicated to providing access to clean water in Sub-Saharan Africa and raising  
 6 awareness of the ongoing need for sanitation, hygiene, and community development in the  
 7 region. (*Id.*)

8 Further still, Plaintiff's goodwill in the VOSS brand is also enhanced by its VOSS  
 9 World community and the related news and educational services provided under the VOSS  
 10 WORLD mark. (Compl. ¶ 16.) VOSS World is a global society comprised of chefs,  
 11 celebrities, foodies, thought leaders, consumers, distributors, and complementary brands that  
 12 have connections to and/or partner with the VOSS brand. (*Id.*) Under the VOSS WORLD  
 13 mark, Plaintiff offers a variety of reward programs and provides news and information via its  
 14 website in the field of drinking water, dining, hotels, and resorts. (*Id.*)

15 **THE DEFENDANTS' MISCONDUCT**

16 Beginning in 2014, Defendant King approached Plaintiff about the latter's interest in  
 17 developing a VOSS branded luxury day spa and/or spa resort centered around its VOSS Water  
 18 products. (Compl. ¶ 17.) Defendant King represented herself as the CEO of NV Hotel  
 19 Company, d/b/a Boutique Hoteliers. (*Id.*) Defendant King further represented that she had  
 20 numerous hotel clients in Las Vegas and elsewhere interested in licensing the rights to the  
 21 VOSS brand for spa services and related products. (*Id.*) The parties continued to have  
 22 preliminary discussions, predominantly through email, through the beginning of 2015. (*Id.*)  
 23 Those discussions never advanced beyond the preliminary stage and at no point did Plaintiff  
 24 authorize Defendant King to either act on its behalf in negotiating licensing rights to the VOSS  
 25 brand or to use Plaintiff's VOSS Trademarks in promoting any concept, product, or service to  
 26 third parties. (*Id.*)

27 Unbeknownst to Plaintiff, and on information and belief, Defendants registered the  
 28 domain name [www.vosswaterspa.us](http://www.vosswaterspa.us) on or around May 6, 2014 without Plaintiff's

1 authorization. (Compl. ¶ 18 & Ex. C.) As shown, the website advertises spa services under the  
 2 VOSS mark and states that VOSS Water Spa locations are expected to open in Dubai, Sooke,  
 3 and Las Vegas. (*Id.*)

4 On or around February 3, 2015, Plaintiff's counsel sent a letter to the email address  
 5 affiliated with [www.vosswaterspa.us](http://www.vosswaterspa.us) ([info@vosswatersap.us](mailto:info@vosswatersap.us)), demanding that the unauthorized  
 6 use of the VOSS mark cease immediately. (Compl. ¶ 19.) No response was received, but the  
 7 infringing website content was removed. (*Id.*)

8 During a telephone conversation between Defendant King and a representative of  
 9 Plaintiff that occurred on or around February 6, 2015, Defendant King stated that she had  
 10 registered the [www.vosswaterspa.us](http://www.vosswaterspa.us) domain name. (Compl. ¶ 20.) By email message that  
 11 same day, Plaintiff informed her that it was putting the project on hold. (*Id.*) She responded by  
 12 acknowledging Plaintiff's decision and stated that she would offer her interested clients another  
 13 spa brand. (*Id.*)

14 On information and belief, Defendants registered the domain name  
 15 [www.nvwaterspa.com](http://www.nvwaterspa.com) on or around February 8, 2015 without Plaintiff's authorization.  
 16 (Compl. ¶ 21 & Ex. D.) As shown, the website advertises spa services under the VOSS mark  
 17 and states that VOSS Water Spa locations are expected to open in Dubai, Sooke, and Las  
 18 Vegas. (*Id.*)

19 Plaintiff's counsel sent Defendant King a letter on or around April 15, 2015, reiterating  
 20 that Plaintiff had closed its negotiations with Defendants, requesting transfer of the  
 21 [www.vosswaterspa.us](http://www.vosswaterspa.us) domain name, and further asking for written confirmation that her use of  
 22 the VOSS Trademarks would permanently cease, as would her attempts to develop and/or open  
 23 a spa under the VOSS mark or any spa regardless of its name that otherwise uses VOSS  
 24 products. (Compl. ¶ 22.)

25 Notwithstanding Plaintiff's instructions to the contrary, and on information and belief,  
 26 Defendants registered the domain name [www.vossprestige.co](http://www.vossprestige.co) on or around January 12, 2016  
 27 without Plaintiff's authorization. (Compl. ¶ 23 & Ex. E.) As shown, the website advertises spa  
 28 services under the VOSS mark and states that VOSS Water Spa locations are expected to open

1 in Dubai, Sooke, and Las Vegas. (*Id.*)

2 The vossprestige.co and vosswaterspa.us domain names fully incorporate Plaintiff's  
 3 VOSS mark. (Compl. ¶ 24.) Defendant King had actual and constructive knowledge of  
 4 Plaintiff's rights in its VOSS mark prior to registration of the domain names. (*Id.*) Defendants'  
 5 use of the VOSS mark in its domain names affects interstate commerce and is in a manner that  
 6 is likely to cause confusion, mistake, or deception among the public and is without Plaintiff's  
 7 authorization. (*Id.*)

8 Unbeknownst to Plaintiff, and on information and belief, Defendants falsified a letter on  
 9 Plaintiff's letterhead purportedly (but not actually) signed by Plaintiff's Chairman of the Board.  
 10 (Compl. ¶ 25 & Ex. F.) The letter, created by Defendants, dated March 8, 2016 (the "March  
 11 8<sup>th</sup> Letter") was addressed to Defendant King and a private equity advisory firm, Triumpspear  
 12 International, Inc. ("Triumpspear"), located in Canada. (*Id.*) It stated, purportedly on behalf of  
 13 Plaintiff, that Triumpspear "was authorized by Boutique Hoteliers (BH) to represent the  
 14 licensing rights for the Voss Water Spa opportunity.... and potential vitamin brand  
 15 opportunity." (*Id.*) It further stated that "Boutique Hoteliers are sole owners to the rights of the  
 16 'Voss Water Spa.'" (*Id.*) Accompanying the March 8<sup>th</sup> Letter was a VOSS Water Spa concept  
 17 proposal, showing potential spa designs and offering specific financial information intended for  
 18 potential investors, including the following "spa designer fees": (i) \$250,000 for overall brand  
 19 design and the Voss Water Spa concept, (ii) a \$200,000 deposit to begin manufacturing a Voss  
 20 spa product line, (iii) a \$6.25 million deposit to begin rendering spa design services, and (iv) a  
 21 \$200,000 engagement fee. (*Id.*)

22 Plaintiff did not prepare the March 8<sup>th</sup> Letter or concept proposal, nor did Plaintiff  
 23 authorize or request that Defendants or any other person or entity prepare those materials on  
 24 Plaintiff's behalf. (Compl. ¶ 26.) Plaintiff has never authorized Defendants to represent its  
 25 licensing rights. Plaintiff has never granted, conveyed, assigned, or transferred, either directly  
 26 or indirectly, any licensing rights in its VOSS brand to Defendants. (*Id.*)

27 Plaintiff's Chairman of the Board did not sign the March 8<sup>th</sup> Letter or authorize any  
 28 other person or entity to sign on his behalf. (Compl. ¶ 27.) On information and belief, the

1 signature was digitally pasted onto the document as an image. (*Id.*) Below the signature is an  
 2 email address associated with the domain name [vossprestige.co](http://vossprestige.co). (*Id.*) Plaintiff's only  
 3 knowledge of that domain name is in connection with this complaint. (*Id.* & ¶ 21.)

4 On information and belief, Defendants forged the March 8<sup>th</sup> Letter to deceive  
 5 Triumpspear and its clients into believing that Defendants were authorized to convey licensing  
 6 rights for the VOSS brand and Trademarks, despite Plaintiff having never provided that  
 7 authorization, and after Plaintiff affirmatively told Defendant King that it was ending the  
 8 parties' preliminary discussions about licensing the VOSS brand. (Compl. ¶ 28.) On further  
 9 information and belief, Defendants forged the March 8<sup>th</sup> Letter in an attempt to fraudulently  
 10 procure a monetary deposit of several million dollars from Triumpspear and its clients. (*Id.*)

11 On information and belief, Defendants are perpetrating a fraudulent scheme for their  
 12 own commercial gain by disseminating one or more letters that intentionally counterfeit  
 13 Plaintiff's name and the VOSS Trademarks in order to mislead recipients into believing that: (i)  
 14 the communications were authorized by Plaintiff, and (ii) that Defendants possess legitimate  
 15 and transferrable licensing rights in the VOSS brand. Defendants thereafter request an initial  
 16 deposit for those licensing rights from recipients who are under the mistaken impression that  
 17 Defendants and their actions are endorsed, sponsored, or approved by, or associated or  
 18 affiliated with Plaintiff when the same is not true. (Compl. ¶ 29.)

19 On information and belief, Defendants have been coordinating and continue to obtain,  
 20 use, and operate the above-mentioned domain names – [www.vosswaterspa.us](http://www.vosswaterspa.us),  
 21 [www.nvwaterspa.com](http://www.nvwaterspa.com), and [www.vossprestige.co](http://www.vossprestige.co) – and possibly others, in furtherance of the  
 22 fraudulent scheme. (Compl. ¶ 30.) On further information and belief, the websites at those  
 23 domain names are designed to corroborate Defendants' misrepresentations about the ongoing  
 24 development of VOSS Water Spas, thereby enticing and inducing individuals and entities to  
 25 invest in the project through Defendants. (*Id.*) Defendants obtained and used those domain  
 26 names with a bad faith intent to profit from the VOSS mark incorporated in the  
 27 [www.vosswaterspa.us](http://www.vosswaterspa.us) and [www.vossprestige.co](http://www.vossprestige.co) domain names. (*Id.*)

28 On information and belief, Defendants have convinced at least one third party to invest

1 time and money in an enterprise based on the false, fraudulent, and untrue representations made  
 2 by Defendants concerning their ability to license rights in the VOSS brand for a vitamin  
 3 product to be sold in a replica VOSS bottle, that is not authorized by Plaintiff and where  
 4 Defendants have no right to offer any such rights to any third party. (Compl. ¶ 31.) Only  
 5 when the third party became suspicious and decided to check with Plaintiff to verify the  
 6 authenticity of the arrangement it was making with the Defendants did the full extent of  
 7 Defendants' unlawful conduct become known. (*Id.*)

8 Although this complaint focuses on the use of Plaintiff's VOSS brand and Trademarks  
 9 by Defendants, Plaintiff has identified other websites – including but not limited to  
 10 [www.fcukhotelsworldwide.info](http://www.fcukhotelsworldwide.info) – that are, on information and belief, affiliated with Defendants  
 11 and use the tradenames and trademarks of other globally recognizable brands, sometimes  
 12 claiming that Plaintiff and the other brands are part of a collective pool of Defendants' partners.  
 13 (Compl. ¶ 32.) Some of those other brands are among Plaintiff's actual hotel partners,  
 14 including The Ritz-Carlton and Four Seasons. (*Id.*) On further information and belief,  
 15 Defendants have also claimed to represent the famous Dolce & Gabbana brand for similar illicit  
 16 purposes, again without authorization. (*Id.*)

## 17 **LEGAL STANDARDS**

### 18 **A. Expedited Discovery**

19 Generally, a party may not initiate discovery before the parties have met and conferred  
 20 pursuant to Federal Rule of Civil Procedure 26(f). However, a court may authorize earlier  
 21 discovery “for the convenience of parties and witnesses and in the interests of justice.” Fed. R.  
 22 Civ. P. 26(d). The requesting party must demonstrate good cause for earlier discovery. *See*,  
 23 *e.g.*, *Semitool, Inc. v. Tokyo Electron Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002).

### 24 **B. Alternative Service**

25 Rule 4 of the Federal Rules of Civil Procedure governs service upon an individual  
 26 located in a foreign country. Rule 4(f) provides as follows:

27 Unless federal law provides otherwise, an individual-other than a minor,  
 28 an incompetent person, or a person whose waiver has been filed-may be served

1 at a place not within any judicial district of the United States:

2 (1) by any internationally agreed means of service that is reasonably  
3 calculated to give notice, such as those authorized by the Hague Convention on  
the Service Abroad of Judicial and Extrajudicial Documents;

4 (2) if there is no internationally agreed means, or if an international  
5 agreement allows but does not specify other means, by a method that is  
reasonably calculated to give notice:

6 (A) as prescribed by the foreign country's law for service in that  
country in an action in its courts of general jurisdiction;

7 (B) as the foreign authority directs in response to a letter rogatory  
8 or letter of request; or

9 (C) unless prohibited by the foreign country's law, by:

10 (i) delivering a copy of the summons and of the complaint  
to the individual personally; or

11 (ii) using any form of mail that the clerk addresses and  
12 sends to the individual and that requires a signed receipt; or

13 (3) by **other means** not prohibited by international agreement, as the  
court orders.

14 Fed. R. Civ. P. 4(f). (Emphasis added.)

15 Pursuant to Rule 4(f)(3), the Court may authorize **other means** of service. *Rio*  
16 *Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007 (9th Cir. 2002) (affirming the propriety of  
17 allowing service of process by regular mail and e-mail under Fed. R. Civ. P. 4(f)(3)). The  
18 **other means** referenced in Rule 4(f)(3) must comport with constitutional notions of due  
19 process; namely, they must be “reasonably calculated, under all the circumstances, to apprise  
20 interested parties of the pendency of the action and afford them an opportunity to present their  
21 objections.” *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

22 Rule 4(f)(3)’s **other means** provision is an independent basis for service of process and  
23 is neither “extraordinary relief” nor a “last resort” to be used only when parties are unable to  
24 effectuate service under subsections (f)(1) or (f)(2). *See Rio Properties, Inc.*, 284 F.3d at 1015-  
25 16 (a party “need not have attempted every permissible means of service of process before  
26 petitioning the court for alternative relief”). “By all indications, court-directed service under  
27 Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2).” *Id.*, at 1015  
28

1 (citing *Forum Fin. Group, LLC v. Harvard College*, 199 F.R.D. 22, 23-24 (D. Me. 2001)  
 2 (permitting service of process upon a defendant located in Russia by sending the summons and  
 3 complaint by certified mail to the defendant's attorneys at the New York law firm of Skadden,  
 4 Arps, Slate, Meagher & Flom LLP)).

5 “[S]ervice under Rule 4(f)(3) must be (1) directed by the court; and (2) not prohibited  
 6 by international agreement. No other limitations are evident from the text. In fact, as long as  
 7 court-directed and not prohibited by an international agreement, service of process ordered  
 8 under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country.”  
 9 *Rio Properties, Inc.*, 284 F.3d at 1014 (citation omitted).

10 **ARGUMENT**

11 **I. THE COURT SHOULD PERMIT PLAINTIFF TO SERVE A SUBPOENA ON  
 12 DOMAINS BY PROXY TO IDENTIFY THE UNKNOWN DEFENDANTS AND  
 13 TO OBTAIN CONTACT INFORMATION FOR DEFENDANT KING.**

14 Good cause exists to permit Plaintiff to serve Domains By Proxy with a subpoena to  
 15 determine the Unknown Defendants' identities and to obtain their contact information so that  
 16 Plaintiff may serve the Defendants with the Summons and Complaint, including Defendant  
 17 King. In *Gillespie v. Civiletti*, 629 F.2d 637, 642–43 (9th Cir.1980), the Ninth Circuit stated  
 18 that “situations arise . . . where the identity of alleged defendants will not be known prior to the  
 19 filing of a complaint. In such circumstances, the plaintiff should be given an opportunity  
 20 through discovery to identify the unknown defendants, unless it is clear that discovery would  
 not uncover the identities, or that the complaint would be dismissed on other grounds.”

21 That is precisely the situation here. Plaintiff and its counsel do not possess the  
 22 Unknown Defendants' actual names, physical addresses, or their email addresses because the  
 23 Unknown Defendants used a privacy protection service provided by Domains By Proxy when  
 24 they registered the Domains. (See Fountain Decl. ¶¶ 4-6.) They presumably did so to hide  
 25 their true identities, physical addresses, and email addresses from the public. (*Id.*) Instead of  
 26 the Unknown Defendants' actual names, physical addresses, and email addresses, Domains By  
 27 Proxy inserted “proxy” contact information in the WHOIS database to conceal Ms. King's and  
 28 the Unknown Defendants' identities and contact information from being included in the

1 publicly available WHOIS database. (*Id.*) For example, the WHOIS record for  
 2 [www.nvwaterspa.com](http://www.nvwaterspa.com) identifies the registrant as “Registration Private,” the registrant  
 3 organization as “Domains By Proxy,” the registrant street address as 14747 N. Northsight  
 4 Blvd., Suite 111 PMB 309, Scottsdale, AZ, 85260 (the address of Domains By Proxy), and the  
 5 registrant email address as nvaterspa@domainsbyproxy.com. (*See id.* ¶ 5 & Ex. A.) Because  
 6 the Unknown Defendants’ true identities and contact information is not listed in the WHOIS  
 7 database, Plaintiff and its counsel have been unable to identify the Unknown Defendants or  
 8 serve the Unknown Defendants with the Summons and Complaint. (*Id.* ¶ 7.)

9 Privacy protection services like those offered by Domains By Proxy typically forward  
 10 emails directed to the *proxy* email address found in the WHOIS database to the domain name  
 11 registrant. (*Id.* ¶ 6.) However, if Plaintiff used the proxy email addresses to serve the  
 12 Summons and Complaint, it would have no way of knowing whether the Unknown Defendants  
 13 have received the documents and would have no way of identifying the Unknown Defendants  
 14 unless the Unknown Defendants acknowledged receipt of the documents and identified  
 15 themselves to Plaintiff. (*Id.*) This is something the Unknown Defendants are unlikely to do  
 16 given that they chose to pay Domains By Proxy to conceal their identities and contact  
 17 information in the first place by purchasing Domains By Proxy’s privacy protection service.  
 18 (*Id.*) Absent the issuance of a subpoena to Domains By Proxy, Plaintiff and its counsel will  
 19 have no other reliable means of identifying the Unknown Defendants or obtaining their actual  
 20 as opposed to their “proxy” contact information. (*Id.* ¶ 7.) A proposed subpoena is attached  
 21 hereto as Exhibit A.

22 Accordingly, good cause exists for permitting Plaintiff to serve a subpoena upon  
 23 Domains By Proxy in order to identify the Unknown Defendants and obtain their contact  
 24 information.

25 **II. THE COURT SHOULD ENTER AN ORDER PERMITTING PLAINTIFF TO  
 26 SERVE THE DEFENDANTS BY EMAIL TO THE EMAIL ADDRESSES  
 27 RECEIVED FROM DOMAINS BY PROXY.**

28 King has used the [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com)  
 email addresses in connection with her scheme to impersonate Voss. (Compl. ¶ 3.) The

1 Unknown Defendants do business in connection with websites at the following domain names:  
 2 [www.worldwidenv.com](http://www.worldwidenv.com), [www.spahotelgroup.com](http://www.spahotelgroup.com), [www.theboutiquegroup.info](http://www.theboutiquegroup.info),  
 3 [www.fcukhotelsworldwide.info](http://www.fcukhotelsworldwide.info), [www.nvwaterspa.com](http://www.nvwaterspa.com), [www.vossprestige.co](http://www.vossprestige.co), and  
 4 [www.vosswaterspa.us](http://www.vosswaterspa.us). (*Id.* ¶ 4.)

5 The Court should enter an order permitting Plaintiff to serve Defendant King by email  
 6 to the email addresses she is known to have used (*i.e.*, [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and  
 7 [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com)), and by email to any email addresses disclosed by Domains By  
 8 Proxy in response to Plaintiff's subpoena. Similarly, the Court should permit Plaintiff to serve  
 9 the Unknown Defendants by email to any email addresses disclosed by Domains By Proxy in  
 10 response to Plaintiff's subpoena.

11 Service of a summons and complaint by e-mail is an effective method of service. *See*  
 12 *Rio Properties, Inc.*, 284 F.3d at 1018. Indeed, courts have relied on Rule 4(f)(3) (and its  
 13 predecessor, Rule 4(i)(1)(E)) in authorizing alternative methods of service including, *inter alia*,  
 14 service by fax, e-mail, ordinary mail and publication. *Id.*, at 1016; *Absolute Swine*  
 15 *Insemination Co., (H.K.) Ltd. v. Absolute Swine Insemination Co., LLC*, No. 2:12-cv-00606-  
 16 KJD-PAL, 2012 WL 3536788, at \*3 (D. Nev. Aug. 14, 2012) (ordering service by international  
 17 mail to defendant's residence in the Philippines); *accord Haffner Int'l Mktg. Group, Inc. v.*  
 18 *Sahin*, No. 2:13-cv-0459-JCM-VCF, 2013 WL 5954379, at \*2 (D. Nev. Nov. 5, 2013) (holding  
 19 that service on a foreign defendant was proper because service through the Hague Convention  
 20 on the Service of Judicial and Extrajudicial Documents Abroad was "expensive and protracted"  
 21 and would result in undue delay).

22 When registering the Domains, the Defendants were **required** to provide their names,  
 23 physical addresses and email addresses to GoDaddy – the domain name registrar – when they  
 24 registered the Domains. GoDaddy's domain name registration agreement provides as follows:

25 You agree that for each domain name registered by you, the following contact  
 26 data is required: postal address, email address, telephone number, and if  
 27 available, a facsimile number for the Registered Name Holder and, if different  
 from the Registered Name Holder, the same contact information for, a technical  
 contact, an administrative contact and a billing contact.

28 *See* GoDaddy Domain Name Registration Agreement ¶ 5, available at:

[https://www.godaddy.com/agreements/showdoc.aspx?pageid=REG\\_SA](https://www.godaddy.com/agreements/showdoc.aspx?pageid=REG_SA) (last accessed July 5, 2016).

In addition, the Defendants agreed to receive notices concerning the Domains by email to the email addresses they provided. The GoDaddy domain name registration agreement further states that: “You agree that your failure to comply completely with the terms and conditions of this Agreement and any GoDaddy rule or policy may be considered by GoDaddy to be a material breach of this Agreement and GoDaddy may provide you with notice of such breach either in writing or electronically (i.e. email).” *Id.* ¶ 8. Based upon the terms of the domain name registration agreement, GoDaddy is necessarily in possession of the Defendants’ names, physical addresses, and email addresses, and could provide that information to Plaintiff if subpoenaed. Once GoDaddy provides the Defendants’ identities and contact information, the Defendants may be served through the email address they provided to GoDaddy when they registered the Domains.

Also, due process concerns are satisfied because the Defendants provided their email address to GoDaddy and agreed to receive notices concerning the Domains by email. Confirmation of the email's delivery can be obtained by requesting a delivery receipt when the email is sent. If the email is undeliverable, the email will be returned with a notice that the email could not be delivered. Thus, service by email is reasonably calculated to apprise the Defendants of the pendency of this case and is reasonably calculated to afford the Defendants with an opportunity to appear and present their objections to this action. Moreover, service by email is immediate, receipt can be confirmed, and the email addresses the Defendants provided to GoDaddy are highly reliable because they were required by GoDaddy as the preferred and agreed upon means of communicating with the Defendants with respect to the Domains.

## CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court enter an order: (A) granting Plaintiff leave to serve a subpoena on Domains By Proxy seeking the registrant contact information for the Domains; (B) permitting Plaintiff to serve Defendant King by email

1 to the email addresses she is known to have used (*i.e.*, at [nvhotelcompany@gmail.com](mailto:nvhotelcompany@gmail.com) and  
2 [michelle@worldwidenv.com](mailto:michelle@worldwidenv.com)) and by email to any email addresses disclosed by Domains By  
3 Proxy in response to Plaintiff's subpoena; and (C) permitting Plaintiff to serve the Unknown  
4 Defendants by email to the email addresses disclosed by Domains By Proxy in response to  
5 Plaintiff's subpoena.

6 Dated: this 11th day of July, 2016.

7 LEWIS ROCA ROTHGERBER CHRISTIE LLP

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29 *Attorneys for Plaintiff Voss of Norway, A.S.A.*

30 **IT IS SO ORDERED:**

31 

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32 UNITED STATES DISTRICT JUDGE

33 DATED: \_\_\_\_\_